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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,641	02/21/2002	Andreas N. Dorsel	10971150-2	9857

7590 10/12/2006

AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
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EXAMINER

FORMAN, BETTY J

ART UNIT PAPER NUMBER

1634

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No. 10/080,641	Applicant(s) DORSEL ET AL.	
	Examiner BJ Forman	Art Unit 1634	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: 59-61.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 32,33,36-38 and 43-58.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

BJ Forman  
Primary Examiner  
Art Unit: 1634

Continuation of 3. NOTE:

Claims 38 and 47 have been amended to define the detector system as having more than one detector. Claim 69 has been amended to add structure to the apparatus by defining a light "source". The amendments alter the scope of the rejected and therefore would require further search and consideration. Applicant's arguments have been thoroughly review, but are not sufficient to over come the outstanding rejection. Applicant asserts that neither Kaye nor Modell teach all the elements of the claims and Schultz and Zhai fail to cure the deficiencies of Kaye and Modell. Specifically Applicant argues that the combined references do not teach or suggest a detector system configured for positioning at least one detector at a site for receiving a constructively interfering emission from an array. Applicant further asserts that Zhai is not scanning a biopolymer feature and therefore cannot cure the deficiencies of Zhai. The arguments have been considered but not found persuasive for reasons of record i.e. the claims are drawn to an apparatus and the courts have clearly stated that a device is defined by its structure, not intended use. Therefore, the recited receiving emission from an array does not define the apparatus. Applicant further asserts that the z-axis movement of the detector in Modell is parallel movement and therefor would not change the detection angle. The argument has been considered but not found persuasive because the z-axis movement of the detector is not parallel to the sample being detection as asserted. Looking at Fig. 11(which is being described in the passage sited in the office action) detectors (#183) are moved in the z-axis (#186) for detection of the sample (#185). As clearly illustrated the z-axis is not parallel to the sample. Therefore, Applicant's assertion is not supported by the teaching of Modell. Applicant further asserts that a prima facie case of obviousness has not been established because the cited references do not teach all the elements of the claims. The assertion is noted but not found persuasive based on the elements discussed by applicant further discussed above. .



BJ FORMAN, PH.D.  
PRIMARY EXAMINER